



Citizen's Guide to SEPA Review and Commenting

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Abstract: This document provides guidance to citizen's on becoming involved in the environmental review process of proposals, including a guide to commenting under the State Environmental Policy Act (SEPA).

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<http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>
or call Ecology SEPA staff at (360) 407-6922.**

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What is SEPA?

The State Environmental Policy Act (SEPA) provides a way to identify possible environmental impacts that may result from governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies or plans.

The SEPA Rules establish the requirements for conducting environmental review of a proposal. Information provided during the SEPA review process helps agency decision-makers, applicants, and the public understand how a proposal will affect the environment. This information can be used to change a proposal to reduce likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified.

Who does SEPA review?

SEPA applies to decisions by every state and local agency within Washington State, including state agencies, counties, cities, ports, and special districts (such as a school or water district). One agency is usually identified as the “lead agency” for a specific proposal. The lead agency for most private projects will be the city or county where the project is located. For public projects, the lead agency will be the agency proposing the project.

The lead agency is responsible for identifying and evaluating the potential adverse environmental impacts of a proposal. This evaluation is documented and, in most cases, sent to other agencies and the public for their review and comment.

What is the SEPA review process?

SEPA environmental review usually starts when:

- ❖ Someone submits an application to an agency for a license to construct a private project, such as an office building, a grocery store, or an apartment building;
- ❖ An agency is considering construction of a public project, such as a new school, a highway, or a water pipeline; or
- ❖ An agency is developing a regulation, policy, or plan, such as a county or city comprehensive plan, a critical area ordinance, or a state water quality regulation.

Some minor projects do not require environmental review, so the lead agency will first decide if environmental review is needed. If the proposed project is the type

of project that has been “categorically exempt” from SEPA review, no further environmental review is needed.

If the proposed project is not exempt, the applicant will usually be asked to fill out an “environmental checklist”. This checklist asks questions about the proposal and its potential impacts on the environment. The elements of the environment that will be evaluated include earth, air, water, plants, animals, energy, environmental health, land use, transportation, public services, and utilities.

After the checklist has been completed, the lead agency will review the checklist and other information about the proposal. If the lead agency needs additional information to evaluate the proposal, they may ask the applicant to conduct studies, such as a traffic study, or a study to determine if there are wetlands on the project site, etc. The lead agency and applicant may also work together to change the proposal to reduce likely environmental impacts.

If the lead agency has enough information to determine that the proposal is unlikely to have a significant adverse environmental impact, the agency will issue a determination of nonsignificance (DNS). If the information indicates the proposal is likely to have a significant adverse environmental impact, the lead agency will require the preparation of an environmental impact statement (EIS). The EIS will include an evaluation of alternatives to the proposal and measures that would eliminate or reduce the likely environmental impacts of the proposal.

How is SEPA used in Decision making?

The DNS or EIS prepared by the lead agency will provide information to all agencies that must approve the proposal. The agency decision-makers will consider the environmental information along with technical, economic, and other information about the proposal as they decide whether or not to approve the proposal.

SEPA gives agencies authority to condition a proposal when specific adverse environmental impacts are identified in the DNS or EIS. For example, if an EIS indicates the proposal will damage a wetland, the agency decision-maker may require the applicant to change his proposal so that no construction will be done within one hundred feet of the wetland.

In rare cases, an agency may deny a proposal when an EIS shows that the proposal is likely to have significant adverse environmental impacts that cannot be reduced to an acceptable level.

Relationship to other laws

The environmental review process in SEPA is designed to work with other laws and regulations to provide a comprehensive review of a proposal. Most regulations focus on particular aspects of a proposal, while SEPA requires the identification and evaluation of probable impacts to all elements of the environment.

SEPA gives agencies supplemental authority to condition or deny a proposal when other laws and regulations do not provide adequate environmental protection. To use this authority, agencies must have adopted SEPA policies and the DNS or EIS must show that the proposal will have an adverse environmental impact that will not be mitigated under the requirements of other local, state, or federal requirements.

The Growth Management Act (GMA)

As more cities and counties are planning under Growth Management Act, chapter 36.70A RCW, many environmental concerns are being considered during the development of plans and the implementing regulations. Under GMA, cities and counties adopt policies, plans, and regulations to manage land use, environmental resources, and other aspects of growth within their jurisdiction. Environmental review at the planning stage allows the GMA city or county to analyze impacts and determine mitigation system-wide, rather than project by project. Many environmental issues addressed under these planning stages cannot be reconsidered or appealed during later project review. For more information on GMA, visit the Office of Community Development's website at <http://www.oed.wa.gov/>.

Local Project Review Act

GMA cities and counties must also comply with the Local Project Review Act, chapter 36.70B RCW, which provides an integrated project review process. This process combines project review with SEPA environmental review. Requirements include providing early public notice of project proposals, completing review within 120 days after an application is determined complete, and combining permit and SEPA administrative appeals.

Commenting

Many SEPA documents have a comment period that allows the public, tribes, and other agencies to comment on the proposal and its potential environmental impacts. This comment period is your opportunity to tell the lead agency what your concerns are about the proposal.

It is important to comment, not only to express your concerns, but also as a prerequisite to any appeal.

When a chance to comment on a SEPA document is missed or ignored, the opportunity to have a beneficial effect on the proposal is often lost. Comments can provide the lead agency with missing information on the proposal and/or provide input on possible mitigation or alternatives.

Are oral or written comments better?

The lead agency may accept only written comments or they may hold a public meeting or hearing to allow oral comments to be heard. Submitting comments in writing gives commentors assurance that an accurate record of their concerns has been made a part of the record, and is the most common method of commenting on a proposal. Oral comments allow you to share your views in a public forum. During a public hearing your comments will be recorded exactly. Public meetings may be less formal, and an exact record may not be taken.

When to comment

It is common—and valuable—for citizens to comment on proposed projects in their community. It has also become increasingly important to review and comment on nonproject proposals. These include the adoption of local comprehensive plans, subarea plans, critical area ordinances, development regulations, etc. Rules or plans and their implementing regulations are likely to have a much more widespread influence on the community since all future development can be affected. (See also the section on “Relationship with other laws.”)

An opportunity to comment is usually provided for the following types of documents. The type of document(s) issued for a specific proposal will depend on the proposal and the requirements of the lead agency. Some proposals may have multiple opportunities to comment, while others will have only one comment period.

- ❖ **Notice of Application (NOA):** Cities and counties planning under the Growth Management Act are required to issue a notice of application for many projects. The NOA provides an early opportunity for other agencies and the public to review and comment on a project. It is important to comment on the NOA if you have concerns about a proposal, since it is sometimes the only opportunity to comment. Also, the NOA is issued early in the review process when comments can be given greater consideration.
- ❖ **Determination of Nonsignificance (DNS):** The lead agency issues a determination of nonsignificance when they believe a proposal is not likely to have a significant adverse impact on the environment. A 14-day comment period is required for some DNSs, but not all. (For more information on when a comment period is required on a DNS, see WAC 197-11-340(2).)
- ❖ **Determination of Significance/Scoping Notice (DS/Scoping):** When a proposal is likely to have a significant adverse impact on the environment, the SEPA lead agency will issue a determination of significance and asks other agencies, tribes and the public to comment on the proposal and what should be analyzed in the environmental impact statement. After considering any comments, the lead agency will decide what to include in the environmental impact statement.
- ❖ **Draft Environmental Impact Statement (EIS):** The purpose of an EIS is to provide the public and agency decision-makers with information on likely significant adverse environmental impacts of a proposal, as well as reasonable alternatives and other mitigation measures to reduce those impacts. The draft EIS is circulated so that the public and other agencies are given an opportunity to comment on the accuracy and content of the EIS before it is finalized.
- ❖ **Final Environmental Impact Statement:** The final EIS includes responses to the comments made on the draft EIS. There is no comment period for a final EIS, although there is a 7-day waiting period before agencies are allowed to issue any permits or approvals for the proposal.

<p>Lead agencies are required to hold a public hearing for a draft EIS when fifty or more persons, who live within the jurisdiction or who would be impacted by the proposal, submit a written request for a hearing.</p>

What comments are helpful

Comments in the following areas are particularly valuable:

- ❖ Any inaccuracies in the environmental checklist, EIS, or other documentation;
- ❖ Areas of potential environmental impact that have not been identified;
- ❖ Adverse environmental impacts that have not been adequately addressed;
- ❖ Possible mitigation measures that could or should be added to the proposal;
- ❖ Reasonable alternatives to the proposal;
- ❖ The need for additional study(ies);
- ❖ The merits of the alternatives and mitigation measures considered in the document; and
- ❖ Reasons that a determination of nonsignificance is not appropriate and that an environmental impact statement (EIS) should be prepared.

Other tips

It is important to remember that your goal is to communicate your concerns. If you fail to make yourself both understandable and believable, then your message is likely to be wasted.

- **Be clear, concise, and organized.** Decide what you need to say before you begin. Developing an outline, if you have a number of points, is a good idea to help you group your comments in a logical order. Jumping back and forth between several topics reduces the impact of your argument.
- **Be specific.** Saying that you are against a project will not have as much effect as saying why. It is always a good idea to give as much support as possible to your comments. Include as much factual information as possible. For instance, you can compare how things were, to how they are, to how you believe they will be in the future—and why. Referring to the comprehensive plan (if your community has one), development regulations, information on similar projects or situations, or other environmental laws and/or documents can also be helpful. It is important to be as accurate as possible.
- **Identify possible solutions.** Suggestions on reasonable mitigation (conditions to avoid, minimize, or reduce adverse impacts) may help shape a questionable project into a welcome addition to a community. After identifying your concern, whenever possible, suggest possible solutions.

Agency consideration of comments

The SEPA lead agency must consider any comments submitted during the comment period on a SEPA document. What they do with the comments will depend, in part, on the type of SEPA document.

- Determination of nonsignificance – The lead agency is not required to respond to individual comments. Depending on the information in the comment letters, the lead agency may decide to modify the DNS, or withdraw the DNS and require additional review.
- Scoping notice – Comments submitted on a scoping notice will help the lead agency identify issues to be evaluated in the environmental impact statement. There is no requirement for the lead agency to respond to individual comments, but some agencies prepare a summary of the comments.
- Draft environmental impact statements – Comments received on a draft EIS must be included in the final EIS along with a response by the lead agency.

Public notice

Many SEPA documents require a public comment period. When a comment period is required, the lead agency must give public notice and make the document available. In addition, all SEPA documents with a comment period must be sent to the Department of Ecology and are published in the SEPA Register. The SEPA Register is on the Internet at www.ecy.wa.gov/apps/sepa/.

Agencies adopt public notice procedures as part of their agency rules for the implementation of SEPA. To better monitor development in your community, you should contact your local agency to find out what method(s) they use to give public notice. Examples of reasonable methods include (but are not restricted to):

- Posting notice on the property;
- Publishing in a paper of general circulation in the area where the proposed project will be located;
- Notifying public or private groups with interest in the proposal;
- Publishing notice in regional, neighborhood, ethnic, or trade journals;
- Issuing a news release; or
- Publishing notice in an agency newsletter.

Appeals

Administrative appeals

Agencies have the option of providing a SEPA administrative appeal process. If the agency offers an administrative appeal, the procedures and requirements for appealing will be identified in the agency's SEPA procedures. You may want to request a copy of the lead agency's SEPA procedures to determine whether an administrative appeal is available, the method the lead agency will use to notify the public of the appeal, how and when an appeal can be filed, and what will be considered.

A SEPA administrative appeal must be heard at an open record hearing—where evidence and testimony may both be submitted. Normally cities and counties are limited to one open record hearing and one closed record appeal.

Judicial appeals

In addition to administrative appeals, SEPA provides for judicial appeals—an appeal heard in the courts. When available, the administrative appeal process must be completed before filing a judicial appeal. Any judicial appeal of SEPA issues must be combined with the appeal of the underlying government action (such as a building permit for a private project, the adoption of a comprehensive plan or development ordinance, etc.).

Additional Information

This information provides a brief overview of SEPA. Specific requirements are contained in SEPA (Chapter 43.21C RCW) and the SEPA Rules (Chapter 197-11 WAC). Additional guidance is also provided in the SEPA Handbook. Although the SEPA Handbook is designed primarily for agency staff conducting SEPA review and agency decision makers, you may find the information useful.

SEPA REVIEW PROCESS

